



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Edwin G. Moorehead
District Attorney
Travis County
Austin, Texas

Dear Sir:

Opinion No. O-1909

Re: Liability of retail merchants, selling .22 caliber pistols and revolvers, to the occupation tax levied by Article 7047d, Vernon's Annotated Civil Statutes

By your letter of January 16, 1940, supplemented by letter of January 26, 1940, you request our opinion upon the liability of merchants, engaged in the business of selling at retail .22 caliber pistols and revolvers, to the occupation tax levied by Article 7047d, Vernon's Annotated Civil Statutes. You also inquire as to the liability of said merchants to pay the occupation tax levied by the city.

Article 7047d, Vernon's Annotated Civil Statutes, levies the following tax:

"That hereafter there shall be collected from every person, firm or corporation engaging in the business of bartering, leasing, selling, exchanging, or otherwise dealing in pistols for profit, whether by wholesale or retail, an annual occupation tax of Ten Dollars (\$10.00), to be paid on or before January 1st of each year, and to be paid before continuing said business, within thirty (30)

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days from the effective date hereof. Before so engaging in said business, each such dealer shall obtain a license therefor, to be issued by the County Tax Collector of each county in which the applicant has a place of business, and for each separate place of business. The Comptroller of Public Accounts shall furnish said forms to the Tax Collectors." (Underlining ours)

With regard to the occupation tax to be levied upon such business by a city or municipality, section 2 of the above cited article provides as follows:

"The Commissioners' Court of the several counties, as well as municipalities, shall also have the power to levy and collect such a tax, equal to one-half of the amount herein levied."

The case of Caswell and Smith v. State, 148 S. W. 1159, upholds the validity and constitutionality of an excise tax similar in its attributes to the one involved here. The article levying the tax involved in the case cited has been repealed, but we deem this authority, in principle, to be controlling here.

The tax measure under consideration being a valid and constitutional exercise of legislative power, and no facts appearing to take the merchants in question out of the operation and scope of the tax levy above quoted, but on the contrary, it appearing that such merchants are within the letter of the statute, we are constrained to hold that they are and remain in all things liable for the occupation tax thereby levied.

Assuming that the municipal or city tax in question here has been duly levied upon the described business in an amount equal to one-half of the State levy, as authorized and provided by section 2 of Article 7047d, Vernon's Annotated Civil Statutes, hereinabove quoted, it must follow that the merchants in question

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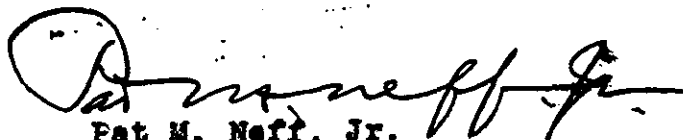
would likewise be liable for the payment of such tax.

Trusting this fully answers your inquiry, we
are,

Yours very truly

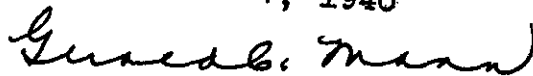
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By


Pat M. Neff, Jr.
Assistant

PMN:LW

APPROVED FEB 7, 1940



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